

A-E CONTRACTING BULLETIN 98-07, 20 OCT 98

SUBJECT: Subcontracting Goals

1. This bulletin addresses concerns raised by the A-E community on how subcontracting requirements are stated in USACE Commerce Business Daily synopses for A-E services.
2. A Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan is required by FAR 19.702, 19.704, 19.705 and 52.219-8 for any contract over \$500,000 (including any options) with a large business if there are subcontracting possibilities. The instructions in Appendix H of ER 715-1-20, A-E Contracting, and the example synopses in Appendices I and J, illustrate how subcontracting plan requirements and goals should be stated in a synopsis for A-E services. (Although it has been a USACE requirement for several years to include subcontracting requirements and goals in A-E synopses, SARD-PP memorandum, 13 July 1998, subject: Subcontracting with Small, Small Disadvantaged, and Women-Owned Small Business Concerns, now requires the inclusion of specific subcontracting goals in all solicitations, to the maximum extent appropriate.)
3. The example synopses give the various small business subcontracting goals of the district for information without mandating that they be met for the instant contract. However, some districts are stating the district goals in their A-E synopses, but mandating that the district goals be met or exceeded on the contract. This is not a proper practice. The district subcontracting goals are the minimum expected performance across all awarded contracts, but do not have to be met on each and every contract. Each contract must be individually evaluated for small business subcontracting possibilities, and goals established which are commensurate with efficient and economical performance of the contract and consider the magnitude and nature of the work.
4. Subcontracting goals are published to influence a firm's selection of subcontractors to maximize the use of small businesses. Compliance with subcontracting goals is not used as a primary evaluation criterion during the A-E selection process. However, small business participation is a secondary criterion in selection as described in paragraph 3-7.c(2)(a) of ER 715-1-20. The greater the small business participation on the team, the greater consideration a firm gets if the secondary criteria are applied to distinguish among technically equal firms.
5. The synopsis should not request that all firms submit subcontracting plans with their SF 254/255 submissions. This would be burdensome, as well as impractical since the firms do not have a complete statement of work at this point. A subcontracting plan is only requested from a firm as a part of its proposal when it is selected for negotiation.

6. A firm's subcontracting intentions are outlined in Block 6, Key Consultants, of its SF 255. Once a firm is selected for negotiation as the highest qualified, the subcontracting goals for the contract must be negotiated considering the proposed team and the magnitude and nature of the work. Also, FAR 19.705-4(c) requires the subcontracting goals to "be set at a level that the parties reasonably expect can result from the offeror expending good faith efforts to use small, small disadvantaged and women-owned small businesses to the maximum practicable extent." Any change(s) made by the A-E firm during negotiations that impact the previously submitted SF 255 (whether a change in subcontractors to improve small business utilization or any other technical change) must be reviewed by the selection board and approved by the contracting officer.

7. In accordance with FAR 19.702(a)(1), failure of the A-E firm to negotiate a subcontracting plan acceptable to the contracting officer will render the offeror ineligible for award. However, FAR 19.705-4(c) cautions that "no goal should be negotiated upward if it is apparent that a higher goal will significantly increase the Government's cost or seriously impede the attainment of acquisition objectives."

8. Bottom-line: State subcontracting plan requirements and goals in CBD synopses similar to the examples in Appendices I and J of ER 715-1-20, and do not mandate compliance with overall command goals in each individual contract.

9. This bulletin has been coordinated with the Bernard Ford, Director, Small Business Office; Laura Meeker, Senior Counsel for Procurement Policy; and the Office of the Principal Assistant Responsible for Contracting.

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